

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PERKINS COIE, LLP,

Plaintiff,

v.

EPSILON GLOBAL ACTIVE VALUE  
FUND II, LTD., *et al.*,

Defendants.

CASE NO. C14-0271-JCC

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter was tried to the Court on October 15, 2015. The claims presented for adjudication were as follows:

- (1) Did Defendants<sup>1</sup> breach the parties' engagement agreement by failing to pay for services rendered?
- (2) Did Defendants' failure to pay constitute breach of an account stated?
- (3) Alternatively, are Defendants liable under a theory of quantum meruit?
- (4) Does this Court have personal jurisdiction over Defendants?
- (5) Did Perkins Coie violate the Rules of Professional Conduct (RPCs)?
- (6) Is Perkins Coie entitled to an award of attorney fees expended in this action?

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<sup>1</sup> Any reference to "Defendants" in this order shall refer to all named defendants except Epsilon Global Active Value Fund II, Ltd. ("Active Value"). Active Value has been dismissed from this case. (Dkt. No. 42.)

1 After bench trial and pursuant to Federal Rule of Civil Procedure 52(a), the Court makes  
2 the following findings of fact and conclusions of law:

3 **I. FINDINGS OF FACT**

4 In March 2010, Epsilon Global Active Value Fund II, Ltd. (“Active Value”), Epsilon  
5 Global Master Fund II, LLP (“Master Fund”), Epsilon Investment Management, LLC  
6 (“Investment Management”), Epsilon Global Asset Management, Ltd. (“Global Management”),  
7 and Steve Stevanovich retained Perkins Coie to defend against a lawsuit filed by the Seattle City  
8 Employees’ Retirement Fund (SCERS) (“the SCERS matter”). Stevanovich was named in the  
9 SCERS lawsuit personally and as director, manager, or president of each of the Epsilon entities.

10 On March 19, 2010, the parties entered into a written engagement agreement. The  
11 agreement contains the following relevant passages:

12 The present engagement is limited to representation and advice concerning the  
13 referenced lawsuit. . . . Although [Perkins Coie] will [be] pleased to discuss with  
14 [Defendants] in the future any expansion of [Perkins Coie’s] legal services on  
15 behalf of [Defendants], unless and until [Perkins Coie] confirm[s] in writing that  
[it is] expanding [its] representation, the scope of [the] engagement is strictly  
limited to this one matter.

16 [Perkins Coie] understand[s] that [Epsilon’s General Counsel Edmund Bergan]  
17 will be the designated client representative with whom [Perkins Coie is]  
18 authorized to communicate with respect to all clients, and that this is acceptable to  
both Epsilon and Mr. Stevanovich.

19 It is [Perkins Coie’s] understanding that, by signing this engagement letter, each  
20 of the clients agrees to be jointly and severally liable for payment of all fees and  
21 costs billed on the case, including accrued late charges, should one or more clients  
fail to make timely payment.

22 Until advised otherwise, [Perkins Coie] will continue to understand that Epsilon  
23 and Mr. Stevanovich have a common purpose, a common goal, that they are in  
24 agreement on a common approach, and that each believes it will be in agreement  
25 with one another on what an acceptable resolution will be. [Perkins Coie] also  
26 understand[s] that Mr. Stevanovich is fully indemnified by Epsilon and that his  
legal fees and defense costs are going to be paid by the corporate entity (although  
he will remain personally liable if Epsilon does not make payment).

1 This letter, along with the enclosed Information for Clients confirms the terms  
2 and conditions on which Perkins Coie will provide services. Unless otherwise  
3 agreed in writing, the terms of this letter and the enclosed Information for Clients  
4 also will apply to any additional matters that [Perkins Coie] agree[s] in the future  
5 to undertake at Epsilon's or Mr. Stevanovich's request. If this letter correctly sets  
6 forth our understanding, please sign and date a copy and promptly return the  
7 signed original to [Perkins Coie] together with Mr. Stevanovich's signed  
8 signature page.

9 The Information for Clients contained the following relevant terms:

10 If we are required to bring an action or proceeding to collect fees or  
11 disbursements due us, we will also be entitled to recover certain fees and costs.  
12 These include, but are not limited to, our own outside attorneys' fees, expert  
13 witness fees, other costs of collection billed to us, and the value of legal services  
14 Perkins Coie's own attorneys perform in analyzing or prosecuting a collection  
15 action if such circumstances arise on your account.

16 You consent to venue and jurisdiction wherever we have an office with attorneys  
17 who worked on your behalf.

18 Mr. Stevanovich signed the engagement agreement on behalf of all clients.

19 During the course of Perkins Coie's representation on the SCERS matter, SCERS  
20 exercised its supermajority ownership of Active Value and thereby took control of the entity.  
21 This created a conflict of interest prohibiting Perkins Coie from representing Active Value.  
22 Perkins Coie terminated its representation of Active Value in or around June 2010. Perkins Coie  
23 did not perform legal work for Active Value at any point thereafter.

24 The SCERS lawsuit resulted in dismissal of all claims against Defendants on September  
25 28, 2010. After the case was dismissed, Perkins Coie continued to perform legal services on the  
26 SCERS matter when two related issues arose. These issues were (1) a public records request  
made to SCERS implicating Defendants' documents and (2) a request from SCERS to meet with  
Mr. Stevanovich to obtain information about various Epsilon entities. This work resulted in  
\$22,015.45 in legal fees. This amount has not been paid as of this date.

In December 2010, Mr. Bergan reached out to Perkins Coie on behalf of Defendants,  
requesting that Perkins Coie advise them on a second matter. This matter was a clawback action  
against Defendants involving Petters Consulting ("the Petters matter"). Defendants sought

1 research assistance regarding a possible cross-claim against a fellow defendant, which would  
2 reduce Defendants' potential liability. Perkins Coie confirmed the scope of the new  
3 representation in writing by way of an email sent from Joseph McMillan, a Perkins Coie  
4 attorney, to Mr. Bergan and Jay Biagi. Mr. Biagi also provided legal representation to  
5 Defendants and acted as Defendants' agent. Perkins Coie began to perform research on the cross-  
6 claim issue.

7 On February 25, 2011, Mr. Stevanovich instructed Mr. Bergan that Perkins Coie should  
8 "sit tight" and refrain from performing further legal services until a third party had provided  
9 important information regarding the cross-claim. Mr. Bergan relayed this to Perkins Coie, who  
10 ceased to perform legal services for Defendants at that time.

11 Mr. Bergan and Mr. Biagi subsequently requested on Defendants' behalf that Perkins  
12 Coie provide additional legal services on the Petters matter. Defendants did not object to any  
13 work requested by Mr. Bergan or Mr. Biagi until the commencement of this litigation. This work  
14 resulted in \$67,356.01 in legal fees. This amount has not been paid as of this date.

15 Defendants were billed monthly and never objected to any billings until this litigation  
16 was filed. As of trial, the outstanding sums in the SCERS and Petters matters have accrued  
17 \$42,839.91 in late fees.

## 18 **II. CONCLUSIONS OF LAW**

19 1. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332, because  
20 there is diversity among the parties and the amount in controversy exceeds \$75,000. This  
21 Court has personal jurisdiction over Defendants by virtue of the Defendants' consent to  
22 jurisdiction in Washington State.

23 2. The engagement agreement is a valid and enforceable contract between Perkins Coie and  
24 Defendants. This contract includes the terms and provisions of the "Information for  
25 Clients."

26 3. The post-dismissal issues that arose in the SCERS matter were issues "concerning" the

1 SCERS lawsuit. Thus, the engagement agreement covers all the work performed in the  
2 SCERS matter.

3 4. The Petters matter constituted an “expansion of [Perkins Coie’s] legal services on behalf  
4 of [Defendants],” and that expansion was “confirm[ed] in writing.” Thus, the  
5 engagement agreement encompasses the Petters matter and all of the agreement’s terms  
6 apply to the Petters matter.

7 5. Bergan had actual authority to act on behalf of Defendants. The engagement agreement  
8 encompasses all work authorized by Bergan.

9 6. Biagi had at least apparent authority to act on behalf of Defendants. The engagement  
10 agreement encompasses all work authorized by Biagi.

11 7. Because the engagement agreement covered all of the work at issue here, Perkins Coie  
12 did not commit a violation of the RPCs.

13 8. Defendants’ failure to pay the outstanding amounts constitutes a breach of contract.

14 9. Defendants are liable to Perkins Coie for outstanding legal fees and late fees in the  
15 amount of \$132,211.37.

16 10. Perkins Coie is entitled to its reasonable attorney fees and costs in pursuing this lawsuit.

17 It is so ORDERED.

18 DATED this 21 day of October 2015.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE